IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31-8-2007

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

C.M.A.No.1427 of 1998

The Management of Wentworth Estate,
Cherambadi P.O.,
Nilgiris, Tamil Nadu. ... Appellant

Vs.

Rethini ... Respondent

This Civil Miscellaneous Appeal is preferred against the order dated 24.10.1997 made in W.C.C.No.31 of 1997 on the file of the Commissioner for Workmen Compensation, Coimbatore.

For Appellant : Mr.M.Vijayan
for M/s.King & Partridge

For Respondent : Mr.R.Sankara Subbu

J U D G M E N T

This Civil Miscellaneous Appeal is preferred against the order dated 24.10.1997 in W.C.C.No.31 of 1997 made by the Deputy Commissioner of Labour, Coimbatore.

2. The respondent herein filed the claim petition before the Deputy Commissioner of Labour, Coimbatore, claiming compensation from the appellant Estate on the ground that her husband by name Dhoddan, who was employed as Daily Labourer in the appellant Estate, died on 29.7.1996 during the course of his employment.

3. The said claim petition was resisted by the appellant by contending that the deceased Dhoddan was a temporary worker of Cherambadi division of the appellant Estate and he was found lying dead in field No.19R at Cherambadi Division near a bathing pit on 29.7.1996 and on that particular day, due to the death of one of the relative of Dhoddan, who was also an employee in the Estate, did not come for work and went to dig a pit (grave) for burying the body. After digging the pit, he went to take bath in field No.19R, where he slipped and suffered head injury due to which he died.

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It is further stated that the death has occurred not during the course of his employment and therefore the appellant is not liable to pay any compensation under the Workmen Compensation Act, 1923.

4. The Deputy Commissioner of Labour, Coimbatore, framed a specific issue as to whether the said Dhoddan died on 29.7.1996 during the course of his employment or not. The Deputy Commissioner found that if any employee of the Estate died, it is the usual practice that the funeral expenses are borne by the Estate management and four persons are sent to dig the pit and the Estate pays salary to the said four persons. It is observed that the said practice is being followed by the appellant Estate on the basis of the recommendations made by the Plantation Labour Advisory Committee. The Deputy Commissioner also found that on 29.7.1996 the husband of the claimant viz., Dhoddan, was directed by the appellant management to dig a burial pit (grave) for one of his deceased relative and the appellant Estate having paid salary for digging of pit by Dhoddan, the said Dhoddan was in employment of the appellant Estate and after digging the pit while taking bath he slipped and suffered head injury, due to which he died. The appellant also issued voucher for the payment of salary for digging the pit (grave). It is also found that it is the custom practised to take bath after commission of funeral, by the persons, who dug the pit and others and therefore the accident of the deceased Dhoddan having taken place during the course of the employment, the appellant estate is liable to pay compensation and assessed the compensation as Rs.96,800/-.

5. The learned counsel for the appellant questioned only the liability and not the quantum. The said statement is recorded. The learned counsel contended that the respondent's husband viz., Dhoddan was not on the employment of the Estate on 29.7.1996 and therefore the appellant is not liable to pay compensation. The learned counsel also cited the judgment of the Supreme Court reported in (1996) 6 SCC 1 (Regional Director, E.S.I.Corporation and another v. Francis De Costa and another) in support of his contention.

6. Heard the learned counsel for the respondent/Claimant also.

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7. The substantial question of law to be decided in this appeal is whether the husband of the claimant/respondent herein died during the course of the employment on 29.7.1996 and whether she is entitled to get compensation under the Workmen Compensation Act, 1923 ?

8. The facts in this case are not in dispute. Even in the counter affidavit filed by the appellant it is stated that the

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husband of the Claimant viz., Dhoddan was a temporary worker of Cherambadi division of appellant estate and he was found lying dead in field No.19R near the bathing pit on 29.7.1996. Even though he has not reported to duty and was on leave, it is clearly stated that due to the death of one of his relative, he went for digging pit for burying the body as directed by the management. The appellant also admit that as per the Plantation Labour Advisory Committee recommendations the funeral expenses of any employee of the Estate will be met by the management and salary for four persons to dig the pit will be paid by the management. It is also on record that due to the death of the relative of the said Dhoddan he has not reported for normal duty of the Estate and he being a relative of the other dead person, he was deputed as one among four persons to dig the pit (grave), for which he was also paid salary by the appellant management and voucher for payment of salary was also issued by the appellant. Therefore the finding given by the Deputy Commissioner of Labour that the husband of the Claimant died during the course of employment of the appellant Estate is perfectly legal and valid. It is not the case of the appellant that the husband of the claimant was not paid by the management for digging the pit and that being the position, no other proof is required to show that he died during the course of the employment.

9. The word 'employer' is defined under Section 2(e) of the Workmen Compensation Act, 1923, thus,

> " "employer" includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means such other person while the workman is working for him"

The word "wages" is defined under section 2(m) as follows:

> "wages" includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of a workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment."

"Employer's liability for compensation" is defined in Section 3(1), which reads thus,

> "3. Employer's liability for compensation.- (1) If personal injury is caused to a workman by accident arising out of and in

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the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable-

(a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding three days;

(b) in respect of any injury, not resulting in death or permanent total disablement, caused by an accident which is directly attributable to-

(i) the workman having been at the time thereof under the influence of drink or drugs, or

(ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or

(iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen."

From the above provisions it is seen that the appellant is the employer of the deceased Dhoddan and he was paid wages by the appellant on the fateful day and the accident arose out of and in the course of employment and therefore the appellant is liable to pay compensation under the Workmen Compensation Act, 1923. The contention that the Deputy Commissioner shown charity to the respondent at the expenses of the appellant is without any basis and the Deputy Commissioner has only discharged his statutory functions under Chapter III of the Workmen Compensation Act, 1923.

9. The decision reported in (1996) 6 SCC 1 (Regional Director, E.S.I.Corporation and another v. Francis De Costa and another) cited by the learned counsel for the appellant is factually distinguishable. In the said case, the accident occurred before the commencement of the employment at 4.30 p.m. when the shift of the deceased commenced. The accident also happened outside the premises of the factory while he was pedelling the cycle, one kilometer away from the factory when he was on the way to the factory. On the above grounds, the Supreme Court held that the accident had not occurred during the course of the employment.

10. But here in this case, the employment of the deceased Dhoddan in the appellant Estate is admitted. He took leave on

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29.6.1997 due to the death of his relative is admitted. Dhoddan being relative of the other deceased employer was requested by the management to dig the pit along with three others as he was a relative of the other deceased person and the salary for digging the pit was paid by the appellant to the deceased Dhoddan and three others as per the Plantation Labour Advisory Committee recommendations and after digging the pit, he met with the accident at the time of taking bath in the pond, which is situated inside the Estate. Hence I am of the view that the Deputy Commissioner of Labour is justified in giving a finding that the accident had occurred during the course of the employment and the appellant is liable to pay compensation.

There is no merit in the appeal and the same is dismissed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

vr

To

1. The Commissioner for Workmen Compensation,
Coimbatore.

2. The Section Officer,
VR Section,
High Court, Madras.

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